

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

16-cr-0212 (LAK)

ERICK CANALES,

Defendant.
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MEMORANDUM AND ORDER

LEWIS A. KAPLAN, *District Judge.*

Defendant moves for an order (1) reducing the term of his imprisonment to time served pursuant to 18 U.S.C. § 3582(c)(1)(A), and (2) imposing a term of house arrest for the amount of time left to be served on his existing term of imprisonment. He contends that he is afflicted with asthma and that this constitutes an “extraordinary and compelling reason” for this relief in light of the COVID-19 pandemic and the evidence that asthmatics are at enhanced risk of infection and, in the event of infection, of an adverse outcome. The government opposes the motion on the grounds that defendant has not exhausted his administrative remedies within the Bureau of Prisons (“BOP”), that the Court lacks the power to grant the requested relief before the lapse of thirty days from the receipt by the warden of the defendant’s facility of an administrative request for compassionate release, and in any case the relief requested would not be appropriate on the merits.

The Court has had the benefit of thorough briefing and argument of counsel. Counsel’s cooperation in seeking to ensure that the Court as well informed concerning defendant’s medical condition as is possible under the time and other constraints in which we find ourselves has been exemplary.

It is agreed on both sides that defendant has filed a compassionate release request with the warden of his facility and that the thirty day period has not run. They disagree as to whether the Court nevertheless may act now if it concludes that action would be appropriate. The issues relating to that question have been thoroughly discussed in Judge Nathan's very helpful opinion in *United States v. Gross*, No. 15-cr-769 (AJN) (S.D.N.Y. filed Apr. 6, 2020), so there is no need for immediate purposes for me to cover that ground again. Suffice it to say for now that:

1. The government shall file a letter immediately following any determination the BOP makes on defendant's request for compassionate release. The Court expects BOP to be able finally to resolve that request on or before April 15, 2020. If it has not done so, the Court will proceed to decide the motion pending before it after the further proceedings described below.

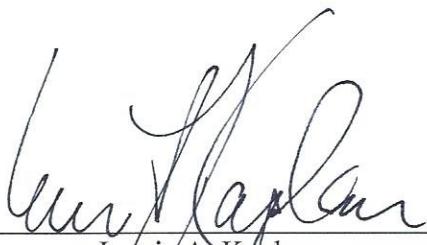
2. If the BOP has not finally resolved defendant's request in his favor on or before April 15, 2020, defendant shall file (a) language for a proposed modification of his sentence, and (b) any further submission in support of his motion, in each case on or before April 16, 2020. Any such submission shall address the question posed in the final paragraph of Judge Nathan's *Gross* opinion.

3. The government may file any response to any such defense submission, also addressing the same question, on or before April 18, 2020.

4. On request of either party communicated to the Court's deputy clerk, the Court will schedule telephone oral argument.

SO ORDERED.

Dated: April 7, 2020



Lewis A. Kaplan
United States District Judge